

**BOARD OF APPEALS CASE NO. 5121**

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**BEFORE THE**

**APPLICANT: Ann M. Birth**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit the existing additions located within the required rear yard setback; 3811 Springhill Drive, Havre de Grace**

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**OF HARFORD COUNTY**

**Hearing Advertised**

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**Aegis: 2/14/01 & 2/21/01**

**HEARING DATE: March 19, 2001**

**Record: 2/16/01 & 2/123/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Ann M. Birth, is requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to allow existing additions to the dwelling to be within the required 50 foot rear yard setback (existing 24 feet), in an RR, Rural Residential District.

The subject property is located in the Springhill subdivision at 3811 Springhill Drive, and is more particularly identified on Tax Map 36, Grid 3-E, Parcel 186, Lot 18. The parcel consists of 1.52± acres, is presently zoned RR, Rural Residential, and is entirely within the Second Election District.

The Applicant, Ann M. Birth, appeared and testified that she is the owner of the subject parcel and has lived there since prior to 1989. The witness described the existing property as improved by a dwelling, two (2) decks which have been there since 1989, a pool in the middle of the back yard, and a shed to the rear of the yard that was constructed several months ago. The witness stated that the building envelope on this property is very small, describing the well located to the right of the property, the septic and drain fields to the left, leaving limited space to the rear of the property. The rear of the property is 39 feet long and 36 feet wide and rises up a 24 foot embankment to the property line.

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The witness described the rear of the property as having side by side 60 foot white pine trees across the entire back of her property. Because of the trees located to the rear, in the opinion of the witness, her rear neighbors could not see any of the improvements to her property and their encroachment into the setbacks would have absolutely no impact on those neighbors as a result. The witness said the decks and pool were built in 1989 by a contractor and she believed that all permits had been obtained in order to get the finance that she was required to get for these projects. She was unaware that there were permits lacking and that there was any encroachment into the setback. Ms. Birth indicated that the shed that was recently located to the rear of the property is used to store deck furniture, pool supplies and yard equipment. The witness concluded by saying that it would cost her about \$3,000 of investment in the shed if she were forced to remove it, and she did not feel that leaving it in its present location would have any adverse impacts on neighboring property owners.

The Department of Planning and Zoning, in its Staff Report dated February 8, 2001, recommends approval of the subject request and found that the subject property was topographically unique and that this topography constrained the building envelope of the property, thus forcing the Applicant to encroach within the required setbacks.

There were no protestants who appeared in opposition to the subject request.

### **CONCLUSION:**

The Applicant is requesting a variance, pursuant to Section 267-35B, Table III, of the Harford County Code, to allow existing additions to the dwelling to be within the required 50 foot rear yard setback (existing 24 feet), in an RR, Rural Residential District.

Section 267-35B, Table III, requires a minimum rear yard setback of 50 feet.

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Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and has described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two-step, sequential process.

1. The first step requires a finding that the property wherein structures are to be placed or uses conducted is in and of itself unique and unusual in a manner different than the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship or practical difficulty results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

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In the instance case, the Hearing Examiner finds that the property is topographically unique and has a severely limited building envelope. Additionally, to the rear of the property are mature pine trees planted across the entire rear property line which completely obstructs the view of adjoining property owners. The Hearing Examiner finds that there would be practical difficulty if the Applicant in this case were required to remove the structure subject to this variance request. In addition to the cost of removal itself, the Applicant would lose the investment in the buildings and the pool that she has already spent.

The Hearing Examiner recommends approval of the request, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the shed, pool and decks.
2. The Applicant maintains the existing vegetative buffer along the rear of the property.

Date     APRIL 19, 2001

William F. Casey  
Zoning Hearing Examiner